APPENDIX A

IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 71-2332

HERBERT E. KELLY, SR., *et al.*,

Plaintiffs-Appellees,

v.

KENNETH GUINN, Supt. of Schools,
Clark County School District, *et al.*,

Defendants-Appellants.

No. 71-2340

HERBERT E. KELLY, SR., *et al.*,

Plaintiffs-Appellees,

v.

KENNETH GUINN, Supt. of Schools,
Clark County School District, *et al.*,

Defendants-Appellants.

No. 71-2422

HERBERT E. KELLY, SR., *et al.*,

Plaintiffs-Appellants,

v.

KENNETH GUINN, Supt. of Schools,
Clark County School District, *et al.*,

Defendants-Appellants.
[Cross-Appeals]

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

Supplemental Brief for Plaintiffs

Pursuant to leave granted by the panel at the oral argument in this matter on November 11, 1971, plaintiffs file this Supplemental Brief explaining in detail the use made of the various maps in the record by plaintiffs' counsel at the oral argument. We are also taking the opportunity in this format to provide the Court with the citations to the two cases mentioned by counsel for plaintiffs at oral argument which were not contained in the brief.

I

With respect to a possible theory that black faculty members were assigned to black schools because the district felt black students should be provided with role models whom they could emulate, counsel for plaintiffs mentioned *Dove* v. *Parham*, 282 F.2d 256 (8th Cir. 1960).

Counsel for plaintiffs also mentioned this Court's decision holding segregation imposed by administrative action without the sanction of state law unconstitutional in *Westminster School District of Orange County* v. *Mendez*, 161 F.2d 774 (9th Cir. 1947).

II

The following comments about the maps in the record relate to subjects discussed at the oral argument and are elaborated in detail for the convenience of the Court.

One of the subjects at issue in this case is the construction by the school district in 1965 and 1966 of the black Gilbert and Mackey Elementary Schools. It is instructive in considering this matter to examine the 1964-65 zoning map for the Highland Elementary School found at page 61 of the record, the 1965-66 zoning maps for the Highland and Mackey Elementary Schools found at page 113 of the record, and the 1966-67 map of the zones for Highland,

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Gilbert and Mackey found at page 116 of the record. Enrollment statistics by race for each school are available only for the 1964-65 (record at p. 50) and 1966-67 (record at p. 114) school years. Although the comparison is made more difficult because the 1964-65 zoning maps are photocopies of street maps with individual zones delineated by cross-hatching, while the 1965-66 and 1966-67 maps are schematic, it is apparent from a comparison of the three maps mentioned above that the area presently served by Highland (subsequently renamed Booker), Gilbert and Mackey is essentially the same area served by Highland Elementary alone in 1964-65. During that year the record shows that Highland had an enrollment of 1,014 black students at 46 "other" (white) students. The map at page 61 of the record very clearly shows the northern boundary of the Highland zone to have run along Cheyenne Avenue from the railroad tracks on the east to Simmons Street on the west (the Xerox copy of the map in the record does not show the entire street name, but an arrow pointing to the western boundary of Highland running south from its intersection with Cheyenne can be seen and part of the words Simmons Street are visible). The zone runs south to Smoke Ranch Road (again the entire street name is not visible, but the last e of Smoke and the word Ranch can be made out) over to Luning and south to Lake Mead Boulevard. The zone then takes in the entire area north of Lake Mead Boulevard and east to the railroad tracks except for a small area at the eastern edge which is marked "Valley View Estates." Examination of the record at page 73, showing the zone for Matt Kelly Elementary shows the disposition of that small area north of Lake Mead Boulevard and south of Miller Avenue, west of the railroad tracks and east of Revere.

Comparing the original Highland zone with the maps at pages 113 and 116 of the record, the first striking fact

revealed is that the northern boundary line for Highland, Gilbert or Mackey has consistently been drawn along Cheyenne Avenue. At the same time, Gilbert, Mackey and Highland have remained black schools while Lois Craig, the elementary school serving the area north of Cheyenne, has been predominantly white. In 1964-65 when Lois Craig served a large area north of Cheyenne as well as a small area between Simmons and the Thunderbird Air Field, south to Cartier (record at p. 71), it enrolled 725 white students and 32 black students (record at p. 50). In 1965-66, it served essentially the same area. In 1966-67, it served virtually the same area but lost to C.V.T. Gilbert the small space between Simmons and the Air Field; it actually lost a few black students in the process, enrolling 389 white students and 44 black students. Thus, the comment in the Reply Brief of the school board that Mackey was so located as to provide for future growth north of Cheyenne Avenue (page 6 of Reply Brief) is belied by the school district's practice of drawing a rigid boundary between the black area south of Cheyenne and the predominantly white area north of Cheyenne.

In 1966-67 Lois Craig was considerably below its capacity, enrolling 433 students compared to its 1964-65 enrollment of 757. Yet no black students residing south of Cheyenne Avenue between the railroad tracks and the air field were assigned to Lois Craig nor were white students north of Cheyenne assigned to either Gilbert or Mackey. Instead, whites living north of Cheyenne near the air field, who are obviously much closer to Gilbert or Mackey, travelled all the way east to Lois Craig. In 1966-67 Gilbert enrolled 516 blacks and only 5 whites, Mackey 761 blacks and no whites, and Lois Craig 389 whites and 44 blacks.

Except for the addition of the area between Simmons and the air field to Gilbert, all of the zone changes necessitated by the construction of Gilbert and Mackey took place within

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the original Highland zone which was overwhelmingly black. Not surprisingly, three schools which now served that area, instead of one, became racially identifiable as black schools. There was no extension of the Lois Craig zone south or vice versa. There was no adjustment in the zones for other black schools, Kelly, Carson, Madison and Westside, despite the construction of Gilbert and Mackey to relieve the pressure on Highland.

The effect of closing Washington and Jefferson Elementary Schools was also discussed at the oral argument. We refer the Court in this connection to the 1964-65 zoning maps for Washington (record at p. 92), Jefferson (record at p. 62), Kit Carson (record at p. 68), and McCall (record at p. 88) Schools as well as to the 1966-67 zoning maps (record at p. 116).

In 1964-65, the Kit Carson zone extended from Lake Mead Boulevard to West Owens between the railroad tracks and Holmes Street (record at p. 68) just as it did in 1966-67 (record at p. 116). In 1964-65 Carson enrolled 719 blacks and 14 whites. The McCall School in 1964-65 served an area south of Evans and Cartier between the railroad tracks on the west and the Las Vegas Boulevard on the east but extending only south to Lake Mead Boulevard (record at p. 80). At that time it enrolled 514 whites and no black students. The area between the railroad tracks and Las Vegas Boulevard south of Lake Mead Boulevard was served in 1964-65 by the Washington School (record at p. 92). It enrolled 185 whites and 9 blacks (record at p. 50). The Jefferson Elementary School had a zone just east of Washington and east of Las Vegas Boulevard (record at p. 62) enrolling 196 whites and no blacks (record at p. 50).

After Washington and Jefferson were closed at the same time as new capacity was made available west of the railroad tracks by the construction of the Gilbert and Mackey

Schools, the zone for Kit Carson or Westside, black schools, was not extended to the east across the railroad tracks to integrate either facility. Instead the McCall zone was extended southward below Lake Mead Boulevard (record at p. 116). In 1966-67 McCall enrolled 512 whites and 42 blacks. Had Washington or Jefferson been retained, the Superintendent testified that in 1968 they would have been about 50% black (October, 1968 transcript, p. 201). It is further clear that opportunities for desegregation at Carson and Westside presented by the closing of Washington and Jefferson were not taken.

The maps also assisted in visualizing one of the examples mentioned in oral argument of the way in which white students have been assigned to white schools even if closer to black schools. The 1964-65 map for Highland Elementary (record at p. 61) shows an area south of Smoke Ranch Road, north of Lake Mead Boulevard and west of Luning which is much closer to the Highland School than most of the northeast portion of the zone. However, it is excluded from the zone. The zoning map for the McWilliams Elementary School for the same year (record at p. 67) shows that the area referred to next to the Highland School has been obviously gerrymandered into McWilliams; in 1964-65, McWilliams enrolled 989 white students and no blacks while Highland enrolled 1,014 blacks and 46 whites (record at p. 50). The 1966-67 map (record at p. 116) shows the same area cut out of the Gilbert zone and the map on page 119 of the record shows that that area is zoned to McWilliams, a school located so far west that it cannot be shown on the map. Obviously students from that area are bused at the school district's expense to McWilliams, which in 1966-67 enrolled 843 whites and 19 blacks while Gilbert enrolled 516 whites and 5 blacks (record at p. 114). Dr. Lawrence confirmed that this white area has historically been zoned away from the closest black school, either Highland or

Gilbert, and transported to McWilliams or Ronzone (June, 1971 transcript, p. 301-02).

Plaintiffs greatly appreciate the opportunity to elucidate for the Court what the inspection of the maps in the record shows. We regret that because of the short time available to work with the maps we were unable to include these detailed verbal descriptions in our main brief.